IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19962 of 2021

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Chandra Bhushan Prasad, Son of Late Saryu Prasad, Resident of Mohalla- Tutwari, P.S.- Kotwali, District- Gaya presently residing at Mohalla- Subh Residency Complex, A Wing Flat No. 404, Amber Nath Moravali Pada, B Cabin Maharastra- 421501

... ... Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary, Department of Finance, Bihar, Patna.
2. The Principal Secretary, Bihar, Patna.
3. Bihar State Financial Corporation through its Managing Director, Bihar, Patna.
4. Managing Director, Bihar, State Finance Department, Bihar, Patna.
5. The Branch Manager, Bihar State Financial Corporation, Gaya.
6. Sri Ashok Shukla, Son of Ramashankar Shukla, Resident of Nutan Nagar, P.O.-Korra, Hazaribagh, Jharkhand.
7. Sri Purushottam Tripathi, Son of late Sachidanand Tripathi, Resident of Nutan Nagar, P.O.-Korra, Hazaribagh, Jharkhand.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Priya Ranjan, Adv.
For the Respondent/s	:	Mr.Anil Kumar Singh (GP26)
For the BSFC		Mr. Kumar Abhimanyu Pratap, Adv.
		Miss. Rushali, Adv.
		Miss. Sakshi Singh, Adv.
For the Resp. Nos. 6 & 7		Mr. Shekhar Singh, Sr. Adv.

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY

ORAL ORDER

20 03-09-2025 The Hon'ble Supreme Court passed in ***Celir LLP*** v. ***Bafna Motors(Mumbai) (P) Ltd. (2024) 2 SCC 1*** has held as under;

> *"105. We summarise our final conclusion as under:*
>
> *(i) The High Court was not justified in exercising its writ jurisdiction under Article 226 of the Constitution more particularly when the*

borrowers had already availed the alternative remedy available to them under Section 17 of the SARFAESI Act.

(ii) The confirmation of sale by the Bank under Rule 9(2) of the Rules of 2002 invests the successful auction purchaser with a vested right to obtain a certificate of sale of the immovable property in form given in appendix (V) to the Rules i.e., in accordance with Rule 9(6) of the SARFAESI.

(iii) In accordance with the unamended Section 13(8) of the SARFAESI Act, the right of the borrower to redeem the secured asset was available till the sale or transfer of such secured asset. In other words, the borrower's right of redemption did not stand terminated on the date of the auction sale of the secured asset itself and remained alive till the transfer was completed in favour of the auction purchaser, by registration of the sale certificate and delivery of possession of the secured asset. However, the amended provisions of Section 13(8) of the SARFAESI Act, make it clear that the right of the borrower to redeem the secured asset stands extinguished thereunder on the very date of publication of the notice for public auction under Rule 9(1) of the Rules of 2002. In effect, the right of redemption available to the borrower under the present statutory regime is drastically curtailed and would be available only till the date of publication of the notice under Rule 9(1) of the Rules of 2002 and not till the completion of the sale or

transfer of the secured asset in favour of the auction purchaser.

(iv) The Bank after having confirmed the sale under Rule 9(2) of the Rules of 2002 could not have withhold the sale certificate under Rule 9(6) of the Rules of 2002 and enter into a private arrangement with a borrower.

(v) The High Court under Article 226 of the Constitution could not have applied equitable considerations to overreach the outcome contemplated by the statutory auction process prescribed under the SARFAESI Act.

(vi) The two decisions of the Telangana High Court in the case of Concern Readymix (supra) and Amme Srisailam (supra) do not lay down the correct position of law. In the same way, the decision of the Punjab and Haryana High Court in the case of Pal Alloys (supra) also does not lay down the correction position of law.

(vii) The decision of the Andhra Pradesh High Court in Sri Sai Annadhatha Polymers (supra) and the decision of the Telangana High Court in the case of K.V.V. Prasad Rao Gupta (supra) lay down the correct position of law while interpreting the amended Section 13(8) of the SARFAESI Act."

2. Having regard to the fact in this particular case, the auction sale has already been taken place and the sale deed has been executed in favour of the third party/auction purchaser, this Court is not inclined to entertain the present writ petition. The present writ petition is disposed of leaving it open to the petitioner to avail the remedies as available under law before the appropriate forum.

5. With the above direction, the present writ petition stands disposed of.

(A. Abhishek Reddy , J)

Bhardwaj/-

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